

## GOVERNMENT OF PUDUCHERRY

## LABOUR DEPARTMENT

(G.O. Rt. No. 39/Lab./AIL/J/2013, dated 5th March 2014)

## NOTIFICATION

Whereas, an award in I.D. No.18/2004, dated 5-9-2013 of the Labour Court, Puducherry in respect of the industrial dispute between the Managing Director, Fancy Traders, Puducherry and Thiru D. Vadivelu represented by Centre of Indian Trade Union, Puducherry has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G.O. Ms. No. 20/91/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said award shall be published in the official gazette, Puducherry.

(By order)

S. THAMMU GANAPATHY,

Under Secretary to Government (Labour).

## BEFORE THE LABOUR COURT AT PONDICHERRY

*Present :* Thiru T. MOHANDASS, M.A., M.L.,  
Presiding Officer, Labour Court.

Thursday, the 5th day of September 2013

## I.D. No. 18/2004

Centre of Indian Trade Union (CITU) Puducherry,  
42, Cuddalore Road,  
Mudaliarpet, Puducherry. . . Petitioner

*Versus*

The Managing Director,  
Fancy Traders,  
Thattanchavady, Puducherry. . . Respondent

This industrial dispute coming on 2-9-2013 for final hearing before me in the presence of Thiru S. Parimalam, Advocate for the petitioner, Thiru. C.P. Thirunavukkarasu, Advocate for the respondent, upon hearing both sides, upon perusing the case records, after having stood over for consideration till this day, this court passed the following:

## AWARD

This industrial dispute arises out of the reference made by the Government of Puducherry, *vide* G.O. Rt. No. 54/2004/Lab./AIL/J, dated 23-3-2004 of the Labour Department, Puducherry to resolve the following dispute between the petitioner and the respondent, *viz.*,

(1) Whether the non-employment of Thiru D. Vadivelu is justified or not?

(2) To what remedy he is entitled to?

(3) To compute the relief, if any, in terms of money, if it can be so computed?

2. The petitioner, in his claim statement has averred as follows:

One Vadivelu was a workman under the respondent company and on 30-8-2001 when he was reporting for duty, they refused him to enter into the company without assigning any reason. The said workman has approached the management for reinstatement both personally and through letter, but they turned with deaf ears to consider the request of the workman. So far no written order of termination was sent to the workman Vadivelu. The dispute was brought to the notice of the trade union and on 14-9-2011, the trade union also issued a letter to the Labour Officer (Conciliation). In their reply, the management has stated that the workman Vadivelu was absent from 30-8-2001 onwards till date.

During the conciliation, the management agreed to provide the job with back wages. Then the proprietor was reported to be dead, the matter before the conciliation was adjourned periodically. On 9-4-2003 one Jayabalu was present but he has not disclosed anything. In the meanwhile the respondent management has sent a letter, dated 5-4-2003 directing the workman to report for duty within seven days. Since the matter was pending before the Conciliation Officer, the workman was waiting for the verdict of the Conciliation Officer. But the management failed to represent before the Conciliation Officer. Hence, the conciliation was ended failure.

No proper enquiry was conducted for removing the workman Vadivelu. The punishment which is imposed upon the workman is most arbitrary, vitiated by *mala fides* and is a clear case of unfair labour practice which resulted in victimization of the workman for his union activities.

3. In the counter statement, the respondent has stated as follows:-

It is true that one Vadivelu was a worker in the respondent concern. The respondent never refused to give employment to Vadivelu. The workman conspicuously absent from 30-8-2001 to the respondent and he did not apply for any leave or even oral permission from the respondent. To the surprise of the respondent, they have received a letter from the workman, dated 6-9-2011 for the reinstatement and then a strike notice from the petitioner trade union. According to the petitioner,

the workman brought to the notice of the petitioner union on 14-9-2001 and on the same day the petitioner union issued a letter to the Labour Officer, Puducherry for the proposed strike for the aforesaid purpose. When the above admitted facts that were created by the petitioner within 15 days are perused, it reveals that all acts are vindictive and deliberated for the purpose of creating a case for the reasons best known to the petitioner union and the workman.

Bearing all these atrocities, they have sent a letter, dated 26-9-2001 to the Labour Officer, Puducherry as a reply and marking a copy to the petitioner union and also to the workman stating that the respondent concern has not removed the workman from the job and he may join duty within seven days of the receipt of the letter. But, for the reason best known to them, the workman did not turn to the respondent office to resume his employment. Hence, there is no fault on the part of the respondent concern about the employment of the workman.

Eventhough, the workman was absent to the company without assigning any reason, the respondent was ready and willing to provide employment and it was also informed duly to the workman on the same month. But, without accepting the employment, for the reason best known claimed back wages. The respondent never agreed to pay the back wages for the workman. Once the respondent offered employment to the workman, there is no necessity for further conciliation. Hence, they pray for dismissal of the industrial dispute.

4. In the additional counter, the respondent has stated as follows:-

Even before and after raising the dispute before this court, the petitioner was employed in different institutions and getting salaries. The petitioner is getting salary from Self Mutual Benefit Trust and Sarvodaya Vazhvu Aathara Self-help Group.

During the period of alleged employment by the claim petitioner, the respondent company was an individual concern. The proprietor of the concern was one Sathiya Narayana. He died in the year 2002. Then the licence of the concern was transferred to the name of one Usha and Umavani for the year 2003 and 2004 and subsequent to that also and till now the licence is in the name of the said persons. As far as the petitioner workman is concerned, he was a worker under the said Sathiya Narayana and not a worker under the present owners of the concern. Since the proprietor of the concern is different, there is no employer and employee relationship in between the petitioner and the respondent. Hence, they pray for dismissal of the industrial dispute.

5. In the reply claim statement, the petitioner has stated as follows:-

The petitioner denies the averment that the respondent came to know the proceedings only after taking charge of the concern. The respondent herself stated that she is not fully aware of the case, only after the claim statement, through the counsel, she came to know about this case. Admittedly all along the respondent is following the matter for a long time and the petitioner has already examined himself as PW1 by filing proof affidavit and after a long interval, just to protract the proceedings the respondent has chosen to file the additional counter without any basis. In any event, the additional counter is highly time barred.

The facts pleaded in the additional counter are not tenable and is liable to be rejected, neither before the conciliation nor in the counter it has been mentioned by her. By way of additional counter, the respondent has attempted to set up a new defense on her side. Hence, he prays to reject the additional counter filed by the respondent.

6. On the side of the petitioner, PW.1 was examined and Ex.P1 to Ex.P8 were marked. On the side of the respondent, RW1 was examined and Ex.R1 to Ex.R11 were marked.

7. *The point for consideration is:*

Whether the industrial dispute can be allowed?

8. *On the point:*

The contention of the petitioner is that one Vadivelu was a workman under the respondent company and on 30-8-2001 when he was reporting for duty, they refused him to enter into the company without assigning any reason and the said workman has approached the management for reinstatement both personally and through letter, but they turned with deaf ears to consider the request of the workman and so far no written order of termination was sent to the workman Vadivelu. In order to prove their contention, the said Vadivelu was examined as PW1.

9. *Per contra*, the contention of the respondent is that the individual employee Vadivelu was never refused to give employment, when he was reporting duty on 30-8-2001 and he conspicuously absent from 30-8-2001 to the respondent concern and he did not apply for any leave or even oral permission from the respondent.

10. There is no dispute that the said Vadivelu was an employee under the respondent concern. According to PW1 he was working as Accounts Assistant from March 1993 with the respondent management and he was getting salary of ₹ 2,000 per month. Though the respondent has denied the said contention of the petitioner, PW1 has

marked the copy of the certificate issued by the respondent to him as Ex.P1. A perusal of Ex.P1 reveals that the respondent has issued a certificate to PW1 that he is working under them as an Accounts Assistant from March 1993 to till date. Hence, the petitioner has proved through Ex.P1 that PW1 was working under the respondent concern from March 1993 till 30-8-2001 as Accounts Assistant.

11. The respondent has set up his case that it is admitted that the petitioner was an employee under them, but since has absented himself from 30-8-2001 without any notice or information or legal sanctioned leave, it will be presumed that he has abandoned the employment. It is pertinent to refer the following decisions, which are relevant to this case:-

*2002(4) L.L.N. 850:*

*State of Uttar Pradesh Vs. Presiding Officer, Labour Court, Agra and another:*

“Abandonment of service - Even in the case of alleged abandonment, it is necessary for employer to conduct an enquiry, issue a charge sheet and notice to the workman concerned informing him that he is continuously absented without any sanctioned leave - Admittedly this having not been done in this case the plea of employer about abandonment of service by workman not tenable.”

*1988 1 L.L.N. Page 259:*

*Gaurishankar Vishwakarma Vs. Eagle Spring Industries (P) Ltd., and others:*

“Industrial dispute - Practice and procedure - Non - employment of workman - Case of employer is that workman has abandoned service - Even in case of abandonment of service employer has to give notice to workman and hold an enquiry - It is for employer to prove such abandonment - Labour Court expected to follow judicial procedure should not depend on unverified statements to come to conclusion that it was workman who had refused to resume work”.

12. On the side of the respondent, the Manager of the respondent concern was examined as RW1. RW1 in his evidence has deposed that the management has sent a letter dated 26-9-2001 to the petitioner union stating that they had not removed the workman from the job and called upon him to join duty within seven days from the date of receipt of the said letter and marked the said letter as Ex.R2. Ex.R2 confirms the version of RW1. RW1 in his evidence has further stated that the said Vadivelu was continuously and unauthorisedly absent from 30-8-2001, but to their surprise, they received a letter dated 6-9-2001 from the petitioner for his reinstatement and five days later, they received a strike notice from the petitioner union and on 19-9-2001 they

received a notice from the Labour Officer (Conciliation) about non-employment of the workman and from the above facts, it is clear that within a period of 15 days, the petitioner union, the workman Vadivelu have done the above things vindictively and deliberately for the purpose of creating a false industrial dispute for the reasons best known to him, however they sent a letter dated 26-9-2001 to the petitioner union stating that they had not removed the workman from the service and called upon him to join duty within seven days from the date of receipt of the said letter.

13. From the above evidence of RW1, it can be seen that though the workman Vadivelu was continuously unauthorised absent from 30-8-2001, they have sent a letter to him on 26-9-2001 calling upon him to resume duty that too only after receipt of enquiry notice from the Labour Officer (Conciliation). As admitted by RW1, PW1 has sent a letter dated 6-9-2001 to the respondent for his reinstatement, for which no reply has been sent by the respondent. Even after receipt of the strike notice from the trade union, the respondent has not taken any steps to sent a notice to the petitioner, calling upon him to resume duty or asking him to show cause as to why his services should not be terminated for his failure to resume his duties. No wonder, therefore, that there was no enquiry held before the termination of his service. The case of the respondent is that the petitioner had abandoned the service by refusing to come and to resume the work. It is difficult to accept this case. It is now well settled that even in the case of the abandonment of service, the employer has to give a notice to the workman, calling upon him to resume his duty and also to hold an enquiry before terminating his service on that ground. In the present case, the respondent has sent a letter to the workman Vadivelu only on 26-9-2001 that is after 27 days from the date of alleged abandonment of service. It was for the employer to prove that the workman had abandoned the service. In the absence of any evidence, it cannot be said that the said Vadivelu was unauthorized absent from 30-8-2001 cannot be accepted.

14. The learned counsel for the respondent has submitted that Vadivelu was a workman of Fancy Traders which is an individual concern and he worked under one Sathiyarayanana and during the period from 30-8-2001, he continuously absent and in the year 2002, the said Sathiyarayanana died and the license of the firm was transferred in the name of one Usha and Umarani from 2003 and 2004 and after the death of Sathiyarayanana, the management and the proprietary has been transferred and changed and it is a new concern and the licence is also of new for the new concern and they are not taking the liability of Sathiyarayanana and again the concern of the licence was transferred to the present owners and hence no decree or award could be passed as against the present owners.

15. In order to prove the said version, the copy of the licence for possession and sale of Indian made liquors was marked as Ex.R7 and the copy of the reconstitution deed was marked as Ex.R10. A perusal of Ex.R7 reveals that consequent to the death of one Sathiyannarayana, under whom the workman was worked, the licence has been transferred in the name of one Usha and Umavani, who is none other than the daughters of the said Sathiyannarayana on 18-7-2003. On perusal of Ex.R10 reveals that apart from the said Usha and Umavani, one Lavanya and Kishorekumar were joined as partners in the respondent concern on 1-1-2012. RW1 has also marked the copy of the reconstitution deed as Ex.R11. A perusal of Ex.R11 reveals that the said Usha and Umavani have been retired from the respondent concern on 14-2-2012. Though the said Usha and Umavani, who are the daughters of Sathiyannarayana, under whom the petitioner was working, the other two persons are continued as partners in the respondent concern. Further RW1 in his cross examination has stated that the respondent concern is running till now. His relevant portion is as follows:-

“தற்போது எதிர்மனுதாரர் நிர்வாகம் இயங்குகிறது”.

Hence, the contention of the learned counsel for the respondent that the management and the proprietary has been transferred and changed cannot be accepted.

16. The respondent in his counter has stated that even before and after raising the dispute before this court, the said Vadivelu was employed in different institutions and getting salaries and he is getting salary from Self Mutual Benefit Trust and Sarvodaya Vazhvu Aathara Self-help Group. Further, the learned counsel for the respondent has submitted that Vadivelu came to the office on 30-8-2011 stating that he wants to apply for work somewhere and obtained a certificate from their proprietor K. Sathyanarayana. But, no evidence was produced on the side of the respondent to prove the said aspect. Further, there is no mention in Ex.P1 Certificate that the certificate is issued for the purpose of getting job from some other company. In the above circumstances, the said contention of the respondent cannot be accepted.

17. From the above discussion, this court has come to the conclusion that the respondent has failed to prove the petitioner has unauthorised absent from 30-8-2011 by sending a notice calling upon him to resume duty and by conducting the domestic enquiry. Though the respondent has sent a letter, dated 26-9-2001 to the petitioner to resume duty within seven days, it has been sent after sending a letter by the petitioner for his reinstatement and strike notice by the trade union. The petitioner has proved that he was working under the respondent company from the year 1993 till 2001. Hence,

it was necessary to have given opportunity to the workman by sending notice immediately or conducting enquiry. Neither no such opportunity was given to the workman Vadivelu, nor principles of natural justice have been complied with. Hence, the non-employment of the workman Vadivelu bad in law and consequently, he is entitled for reinstatement with continuity of service.

18. The next issue before me is: Whether the petitioner is entitled to get full back wages. This issue must be determined keeping in view the aforementioned background of the case. There can, however, be no doubt whatsoever that there has been a shift in the approach of this court in regard to payment of back wages. Back wages cannot be granted almost automatically upon setting aside an order of termination. The Hon'ble Apex Court and High Courts in a number of decisions opined that grant of back wages is not automatic. The burden of proof that he remained unemployed would be on the workmen keeping in view the provisions contained in section 106 of the Evidence Act 1972. This court in the matter of grant of back wages has laid down certain guidelines stating that therefore several factors are required to be considered including the nature of appointment; the mode of recruitment; the length of service.

19. It is also trite that for the purpose of grant of back wages, conduct of the concerned workman also plays a vital role. Each decision, as regards grant of back wages or the quantum thereof, would, therefore, depend on the fact of each case. It cannot be claimed as a matter of right. In the case on hand, admittedly though the respondent was ready and willing to provide employment and duly intimated the same under Ex.R2 and Ex.R6 dated 5-4-2003, the said Vadivelu without coming to work, is claiming back wages without any *bona fide* reasons. When the respondent management offered employment, the workman ought to have resumed his duty immediately. But, the workman evaded to resume his duty. Apart from the above, the present industrial dispute was filed in the year 2004, but, the workman Vadivelu filed his claim statement only in the year 2007. There is no plausible explanation from the petitioner for the delay in filing the chief proof affidavit. Hence, considering the facts and circumstances of this case, this court comes to the conclusion that the workman Vadivelu is not entitled to get the back wages and other benefits. The point is decided accordingly.

20. In the result, the industrial dispute is partly allowed and the workman Vadivelu is entitled for reinstatement with continuity of service. However, he is not entitled for back wages and other statutory benefits. No costs.

Typed to my dictation, corrected and pronounced by me in the open court on this the 5th day of September, 2013.

**T. MOHANDASS,**  
Presiding Officer, Labour Court,  
Puducherry.

*List of witness examined for the petitioner:*

PW.1 — 12-11-2009 - Vadivelu

*List of witness examined for the respondent:*

RW.1 — 9-7-2013 - Shanmugam

*List of exhibits marked for the petitioner:*

Ex.P1 — Photocopy of the certificate issued by the respondent, dated 30-8-2001.

Ex.P2 — Copy of the letter sent by the petitioner, dated 6-9-2001.

Ex.P3 — Acknowledgment card.

Ex.P4 — Copy of Notice(Form L) sent by the President CITU.

Ex.P5 — Letter sent by the petitioner to the respondent, dated 26-9-2001.

Ex.P6 — Copy of the letter sent by the petitioner to the respondent, dated 1-10-2001.

Ex.P7 — Original letter, dated 5-4-2001 sent by the respondent to the petitioner.

Ex.P8 — Copy of the letter sent by the petitioner, dated 15-4-2003.

*List of exhibits marked for the respondent:*

Ex.R1 — Letter of authorization, dated 6-7-2013.

Ex.R2 — Letter, dated 26-9-2001 sent by the respondent to L.O.

Ex.R3 — Acknowledgment cards 2 in Nos.

Ex.R4 — Letter sent to the respondent by CITU

Ex.R5 — Failure report, dated 26-8-2003.

Ex.R6 — Letter by the respondent to Vadivelu, dated 5-4-2003

Ex.R7 — Copy of the letter of change ownership dated 18-7-2003.

Ex.R8 — Copy of the licence of possession of the D.C. Excise, dated 23-4-2013.

Ex.R9 — Death certificate of Sathiyannarayana, dated 20-12-2002.

Ex.R10 — Reconstruction deed, dated 1-1-2012.

Ex.R11 — Reconstruction deed, dated 14-2-2012.

**T. MOHANDASS,**  
Presiding Officer,  
Labour Court, Puducherry.

**GOVERNMENT OF PUDUCHERRY**

**LABOUR DEPARTMENT**

(G.O. Rt. No. 41/Lab./AIL/J/2014, dated 7th March 2014)

**NOTIFICATION**

Whereas, an award in I.D. (T) No. 6/2008, dated 3-1-2013 of the Industrial Tribunal, Puducherry in respect of the industrial dispute between the General Manager, M/s. Bharathi Mills, Puducherry and represented by Bharathi Mills Pondicherry Thozhilalar Urimai Padukappu Sangam, Puducherry over regularisation of services of Thiru P. Mannankatti has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G.O. Ms. No. 20/91/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said award shall be published in the official gazette, Puducherry.

(By order)

**S. THAMMU GANAPATHY,**  
Under Secretary to Government (Labour).

**BEFORE THE INDUSTRIAL TRIBUNAL AT  
PONDICHERRY**

*Present :* Tmt. S. MARY ANSELAM, M.A., M.L.,  
Presiding Officer,(FAC),  
Industrial Tribunal.

*Friday, the 3rd day of January 2013*

**I.D. (T) No. 6/2008**

P. Mannagati,  
Rep. by the President/Secretary,  
Sri Bharathi Mills Pondicherry  
Thozhilalar Urimai Padukappu Sangam,  
Puducherry. . . Petitioner

*Versus*

The General Manager,  
Sri Bharathi Mills, Puducherry. . . Respondent

This industrial dispute coming on this day before me for hearing in the presence of Thiru K. Velmurugan, filed vakalat for the petitioner and Thiru K. Ravikumar, Advocate for the respondent, upon hearing both sides, upon perusing the case records, after having stood over till this day, this court passed the following:

## AWARD

The petitioner union has raised an industrial dispute before the Labour Officer (conciliation), Puducherry in respect of the regularisation of service of Mrs. Mannagati, wife of Purushothaman (late) by the respondent management. Since the parties presented their view, and had divergent views in front of the conciliation table, the conciliation ended in failure and the Labour Officer (Conciliation) submitted their failure report on 24-1-2008, following which the Government of Puducherry through the Labour Department, has made the reference of the dispute to the Industrial Tribunal, Puducherry, through No. 445/2006/LO(C)/AIL.

Whether it is possible to pass an award directing the respondent to confirm the services of the petitioner with retrospective effect and to give her the back wages, continuity of services and all attendant benefits?

2. The petitioner in this petition has stated as follows:

One employee named Mrs. Mannagati was working in the respondent management for past 13 years who joined in the company on 2-10-1995 on the basis of death of her confirmation employee Mr. Purushothaman who was working for 26 years in the respondent company in the category Scavenger as Sweeper for monthly salary and died on 26-6-1995. The petitioner was appointed by the respondent company on 2-10-1995 on the same category of Scavenger as Sweeper on which her husband for the daily wages of ₹ 25 per day and the monthly salary is ₹ 650. The petitioner was working continuously for 240 days in each and every year in the same category for the past 13 years. Though the petitioner was working continuously for 280 days in 2 years and in the same category from the date of joining (2-10-1995), the management is liable to make the employee regularisation in daily allowances as permanent employee according to Industrial Disputes Act. But the management failed to make such privilege for the petitioner employee. The petitioner continued her job in the same category along with the increment of daily wages for the past 13 years by signing the voucher of the respondent company from the date of joining up to till date.

In the first stage from 2-10-1995 to 31-12-1996, the petitioner was working in the category of Scavenger in daily wages for ₹ 25 per day and for the month of ₹ 650. In the second stage from 1-1-1997 to 31-12-1998, due to her continuous working for about 280 days, she was given an increment for about ₹ 35 per day and for month of ₹ 910. In the third stage, though the petitioner was working more equally to the regularisation employee, the management gave

an increment for about ₹ 50 per day and for month of ₹ 1,300. In the fourth stage, 1-1-2004 to 10-6-2003 she gave an increment by the management for about ₹ 70 per day and for a month of ₹ 1,830. In the fifth stage, from 11-6-2008 to till now, the petitioner is getting daily wages up to ₹ 100 per day and for the month of ₹ 2,600 were also signing the voucher of the respondent management.

Though the petitioner's husband died while he was an employee in the respondent management company for about 26 years, the petitioner was appointed directly by the management based upon the legal heirs of the worked employee, she approached for her confirmation of job as an regularisation employee. Though the petitioner was basically an illiterate and was not aware of the benefits and privilege she continued her job for the past 13 years. As a result of oral approach, the respondent promised the petitioner to make her confirmation employee with all her benefits according to the Industrial Disputes Act. Then, the petitioner approached the respondent with the help of the union sangam for her regularisation on many negotiations were also held between the management and the union sangam which ended in failure. So the petitioner approached the (conciliation) Labour Office on 6-3-2006 stating all her facts and along with her ESI Card for her regularisation of job. The Conciliation Officer issued an notice on 10-3-2006. The management gave an reply with false allegation against the petitioner after four months on 31-7-2006 stating that the petitioner was not appointed by the management, based on her husband death and her request for employment she was appointed in the mill as Scavenger. She was engaged on casual worker daily wages basis and it has does not mean on regular worker of the management. It is further stated she was working under a contractor on the job of contract basis and getting payment from the contractor directly. The conciliation ended in failure, though the petitioner approached this court seeking necessary relief.

3. The respondent in this counter has stated as follows:

Though the petitioner union is a recent factor and is not having any representative character with sufficient membership of workers in the mills to raise an industrial dispute and so the petition is liable to be dismissed. The respondent submits that this is Mannagati approached the respondent requesting to do casual work such as sweeping, cleaning and gardening etc. She was permitted to the respondent mills whenever required to do the above kind of casual job which are not regular in nature and

which does not form part of mills routine and category work. This opportunity was given to her for the reason that her husband Mr. Purushothaman has worked in their mills and died while and in the services of the mills. Mrs. Mannagati was given the chance of employment clearly on humanitarian ground. The work offered to her casual in nature and the mills had not engaged her continuously in any specific job only on humanitarian ground. She was permitted to be covered under the provisions of the ESI Act but it does not mean that she is appointed as regular worker of the mills. From January 2004 onwards the petitioner is not engaged by the mills directly but she is working with a contractor on job contract basis and getting payment from the contractor directly.

As per section 2 (S) of the Industrial Disputes Act she is not employee and hence cannot raise industrial dispute. The respondent submits that those workers who are casual cannot claim regularisation and continuity of job under the present statutes especially under the Industrial Disputes Act and as per Mills Standing Orders. It is further stated that since there was ban in the recruitment in the mills as per the direction received from Government of India there was no recruitment at all in the Mills. So she gave a false statement that she was appointed in the Mills from 2-10-1995. The respondent mill does not have any approved vacancy in the post of Scavenger. So the petition deserves to be dismissed.

5. *The point for consideration is:*

Whether the industrial dispute can be allowed?

6. *On the point :*

It is admitted by the respondent that the petitioner is doing work in the mills after the death of her husband Mr. Purushothaman who was the employee under the mill for the past 26 years. The appointment order, dated 2-10-1995 is not filed on the side of the petitioner. But, it is admitted by the respondent that she is working in the mills from 2-10-1995 as a casual labourer. On the side of the petitioner, the PW.1 to PW.3 were examined and exhibit P1 to P9 were marked. On the side of the respondent, RW.1 was examined and no document was marked. The ESI card which was given to the petitioner was also marked in this case. So from the evidence of PW.1 to PW.3 it is clear that Mrs. Mannagati working in the respondent mill from 2-10-1995 onwards. According to the petitioner she is getting salary by putting signature in the voucher. According to RW.1 since she is casual employee, her signature is not obtained in the attendance register and the acquittance register from the period 2-10-1995 till date is not filed by the respondent before court. So, it is not proved

that she is not putting her signature in attendance register as well as in the acquittance register for getting salary.

*As per CDJ 2005 MHC 1735*

It is held that a person should not be kept in a temporary or *ad hoc* status for long. Where a temporary or *ad hoc* appointment is continued for long the court presumes that there is need and warrant for a regular post and accordingly directs regularisation. In such circumstances, the services of the first respondent have to be regularised from the date of her initial appointment, when the date of appointment is not disputed and the appointment is regular and there is no violation of any rules in such appointment, the court cannot postpone the date of regularisation from the date of actual appointment to the date of filing of the writ petition or to any other date. In view of the above, the services of the first respondent have to be regularised from the date of her initial appointment. In the present case also the appointment of the petitioner is 2-10-1995 according to the petitioner as well as the respondent. According to the petitioner she was doing the scavenger work in the mill for the period of 13 years. As per the above judgment a person should not be kept in temporary job for a long period. So, accepting the above decision, it is decided that the services of the petitioner have to be regularised from the date of her initial appointment on 2-10-1995.

*As per CDJ 2013 MHC 4341*

Having regard to the undisputed fact the first respondent was appointed in 1995 on compassionate ground due to the demise of his father, who was a postman and he is continuing in service as on date, we are of the view the tribunal has rightly allowed the application filed by the first respondent. It is made clear that the first respondent is to be regularised on the same terms and conditions on which the 202 similarly placed persons were granted regularisation within four weeks from the date of receipt of copy of this order. In the present case also the petitioner was given employment after the death of her husband who was the employee of the respondent management for a period of 26 years. So, her appointment is also on the basis of compassionate ground but this aspect was not admitted by the respondent mill. But she was given employment after her husband's death on 2-10-1995 is admitted by RW.1. She is doing work from 2-10-1995 till now. So she is in continuous service for the period of 13 years. So, accepting the above decision the petitioner is to be regularised on the terms and conditions of the work of a Scavenger.

*As per CDJ 2013 MHC 4369*

In service jurisprudence, no post can be treated permanently as temporary. Temporary means only for a certain limited period. When a post being held by a person continues to be held for more than a certain limited period, it cannot be said that it is a temporary post. Such continuance, in a certain post, automatically takes away the character of temporary and takes the character of permanent. So, in this case also the petitioner is appointed temporarily and she is doing from same work for the period of 13 years and so it cannot be said that it is temporary post. The continuance service for the period of 13 years automatically takes away the character of temporary and takes the character of permanent. So, it is decided that the petitioner is a permanent employee of the respondent mill.

7. It is argued on the side of the respondent that she is casual labourer and she is getting salary from the contractor, but no record is filed to prove it. But RW.1 clearly admits that she is employee in the mill on 2-10-1995 to do the scavenger work after the death of her husband.

8. It is admitted by the respondent that the petitioner is working in the company as a casual labourer so they have not filed any document. It is stated on the side of the respondent that there is some prohibition with regard to the new appointment by the Government and no order was filed to prove it. According to PW.1 there was no prohibition to appoint new employees by the Government. PW.1 further admits that Mannagati had ESI coverage.

9. RW.1 admits in his evidence as follows:

மண்ணாங்கட்டி என்ற தொழிலாளி தற்போதும் எங்கள் தொழிற்சாலையில் ஒப்பந்த தொழிலாளராக பணி செய்கிறார். சுமார் 7 அல்லது 8 வருடங்களாக மனுதாரர் மண்ணாங்கட்டி, வேலையிருந்தால் வேலை செய்வார். மண்ணாங்கட்டி பெருக்கும் வேலை செய்வார். மனுதாரர் மண்ணாங்கட்டி என்பவரின் கணவர் புருஷோத்தமன் என்பவர் ஏற்கனவே எங்கள் மில்லில் பணி செய்தார். எங்கள் மில்லில் பெருக்குபவர் பதவி காலியாக உள்ளது என்றால் சரிதான். ஒரே ஒரு பெருக்குபவர் பதவி தற்போது காலியாக உள்ளது. மண்ணாங்கட்டி பணி செய்து வந்த பிரிவில் உள்ள engineer சாட்சியாக வந்து விசாரித்தால் மட்டுமே சரியாக புலப்படும். மண்ணாங்கட்டி இஎஸ்ஐ பிடித்தம் மற்றும் அந்தச் சலுகை உண்டு என்றால் சரிதான். மனுதாரர் தரப்பில் தாக்கல் செய்யப்பட்டுள்ள ஏ.1 இஎஸ்ஐ அட்டையில் ஒப்பந்த தொழிலாளி என்று கண்டிருக்கவில்லை. மண்ணாங்கட்டி என்பவர் ஒப்பந்த தொழிலாளி என்பதற்கு ஆவணம் தாக்கல் செய்யவில்லை. எங்கள் மில்லில் யாரையும் நியமிக்கக் கூடாது என்று தடை உத்தரவு தலைமை செயலாளரால் போடப்பட்டது. அது எந்தத் தேதியில் அந்த உத்தரவு பிறப்பிக்கப்பட்டது என்பது தெரியாது. அந்த தடை உத்தரவு தற்போது அமலில் உள்ளதா? என்றால் தெரியாது. அந்தத் தடை உத்தரவின் நகல் தாக்கல் செய்யவில்லை.

So, from the evidence of RW.1, it is clear that Mannagati is working in the company after her husband's death. The Government order with regard to the prohibition of employment is not filed before court. Further, according to RW.1, one Scavenger post is kept vacant. Since she is working in company continuously for the past 13 years the argument that she is casual labourer is not a correct one. She is working under the contractor is also not proved through records. Due to the long passing of years of service her job became a permanent one and so her service is to be regularised on the same terms and conditions similarly placed persons were granted. So the service of the petitioner has to be regularised from the date of her initial appointment namely 2-10-1995 because the date of appointment is not disputed. Taking into consideration of all the above said aspects, the petition filed by the petitioner is allowed. The respondent is directed to confirm the services of the petitioner with retrospective effect and to give her the back wages, continuity of services and all attendant benefits.

10. In the result, the industrial dispute is allowed. However in the circumstances of the case, there is no order as to costs.

Typed to my dictation, corrected and pronounced by me in the open court on this the 3rd day of January 2014.

**S. MARY ANSELAM,**  
Presiding Officer,  
Industrial Tribunal.

*List of witnesses examined for the petitioner:*

- PW.1 — 8-2-2012 — K. Mohandoss
- PW.2 — 21-6-2013 — J. Vincent
- PW.3 — 21-6-2013 — B. Kannadasan

*List of witness examined for the respondent:*

- RW.1 — 6-8-2013 — M. Sugumaran

*List of exhibits marked for the petitioner:*

- Ex.P1 — Copy of the ESI Card of the Petitioner, dated 3-2-2004.
- Ex.P2 — Copy of the identity card of deceased Purushothaman issued by the respondent management.
- Ex.P3 — Death certificate of Purushothaman, dated 8-3-2006.
- Ex.P4 — Copy of the letter given by the petitioner union to the Labour Officer (Conciliation), dated 6-3-2006.
- Ex.P5 — Copy of the reply submitted by the respondent management to the Labour Officer (Conciliation), dated 31-7-2006.



- Ex.P6 — Copy of the failure report submitted by the Labour Officer (Conciliation) to the Secretary to Government (Labour), dated 24-1-2007.
- Ex.P7 — Copy of the notification issued by the Government of Puducherry, dated 13-3-2008.
- Ex.P8 — Copy of the Employment Identity Card of J.Vincent issued by the General Manager, Sri Bharathi Mills, Puducherry.
- Ex.P9 — Copy of the Employment Identity Card of B. Kannadasan issued by the General Manager, Sri Bharathi Mills, Puducherry.

*List of exhibits marked for the respondent: Nil*

**S. MARY ANSELAM,**  
Presiding Officer,  
Industrial Tribunal.

**GOVERNMENT OF PUDUCHERRY**  
**OFFICE OF THE CHIEF EDUCATIONAL OFFICER**

*No. 3818/CEO/KKL/E3(Exam.)/2014.*

*Karaikal, the 27th March 2014.*

**NOTIFICATION-I**

It is hereby notified that the original H.S.C. Mark Certificates, under Register Number 522081 and 938038 respectively bearing Serial Number 4481875 and TMR Code No. G451123 respectively March 2009 and March 2010 sessions both in respect of A. Sabarimalai Nathan, an ex-pupil of VOC Higher Secondary School, Kottucherry, Karaikal are reported to have been lost beyond the scope of recovery and it is proposed to issue duplicate certificates. If the original certificates are to be found by anybody they should be sent to the Secretary, Board of Secondary Examinations, College Road, Chennai-6 for cancellation, as they are no longer valid.

**V. MARIMUTHU,**  
Chief Educational Officer.

**NOTIFICATION-II**

It is hereby notified that the original H.S.C. Mark Certificate under Register Number 573917 bearing Serial Number 5976236 of March 2011 session in respect of S. Prabhuganesh, an ex-pupil of VOC Higher Secondary School, Kottucherry, Karaikal is reported to have been lost beyond the scope of recovery and it is proposed to issue a duplicate certificate. If the

original certificate is to be found by anybody, it should be sent to the Secretary, Board of Secondary Examinations, College Road, Chennai-6 for cancellation, as it is no longer valid.

**V. MARIMUTHU,**  
Chief Educational Officer.

**NOTIFICATION-III**

It is hereby notified that the original S.S.L.C. Mark Certificate under Register Number 566604 bearing Serial Number 6985378 of March 2009 session in respect of S. Prabhuganesh, an ex-pupil of Karaikal Ammaiyar Government Aided High School, Karaikal is reported to have been lost beyond the scope of recovery and it is proposed to issue a duplicate certificate. If the original certificate is to be found by anybody, it should be sent to the Director of Government Examinations, Chennai-6 for cancellation, as it is no longer valid.

**V. MARIMUTHU,**  
Chief Educational Officer.

**NOTIFICATION-IV**

It is hereby notified that the original S.S.L.C. Mark Certificate under Register Number 476080 bearing Serial Number SEC 0577825 of March 2003 session in respect of N. Sathish, an ex-pupil of NSC Bose Government Higher Secondary School, Thalatheru, Karaikal is reported to have been lost beyond the scope of recovery and it is proposed to issue a duplicate certificate. If the original certificate is to be found by anybody, it should be sent to the Director of Government Examinations, Chennai-6 for cancellation, as it is no longer valid.

**V. MARIMUTHU,**  
Chief Educational Officer.

**NOTIFICATION-V**

It is hereby notified that the original S.S.L.C. Mark Certificate under Register Number 412970 bearing Serial Number 1389916 of April 2001 session in respect of R. Selvi, an ex-pupil of Annai Theresa Government Girls' Higher Secondary School, Karaikal is reported to have been lost beyond the scope of recovery and it is proposed to issue a duplicate certificate. If the original certificate is to be found by anybody, it should be sent to the Director of Government Examinations, Chennai-6 for cancellation, as it is no longer valid.

**V. MARIMUTHU,**  
Chief Educational Officer.